IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **STATE OF GEORGIA, Peach County School District through the Peach County Board of Education, *et al.*,** **Defendant.**	))))))))))))	**CIVIL ACTION NO. 5:69-CV-2771(MTT)**

ORDER

On October 7 and 15, 2015, the United States, the State of Georgia, and the Peach County School District moved for the entry of two consent orders. In one, the parties asked the Court to find that the Peach County School District had achieved unitary status with regard to five of the so-called *Green* factors.[1] The Court granted that motion. (Doc. 44). In the other, the parties asked the Court to enter a mandatory injunction ordering the Peach County School District to take further steps toward achieving unitary status with regard to the final *Green* factor. (Doc. 41). As discussed in some detail in the Court's November 10 order, that proposed injunction raised significant issues. In a nutshell, the Court was concerned that the injunction imposed further obligations on the School District even though there was no evidence, or even a suggestion, that any condition in the School District was the result of the *de jure* segregation that existed prior to the Court's 1974 desegregation order. Accordingly, the

[1] *Green v. Cty. Sch. Bd. of New Kent Cty., Va.*, 391 U.S. 430 (1968). As discussed below, "'unitary status' requires a judicial determination that a school district has implemented a desegregation plan in good faith and that the vestiges of discrimination have been eliminated to the extent practicable." *United States v. State of Ga., Troup Cty*., 171 F.3d 1344, 1349-50 (11th Cir. 1999).

Court ordered the parties to explain the factual basis for their request that the Court order further judicial supervision over the District. The parties have now responded.

In its response, the State of Georgia candidly acknowledged that there is no evidence that any claimed statistically significant racial disparities in the District's gifted programs and advanced placement courses are vestiges of *de jure* segregation. Moreover, the State notes that the criteria for eligibility for enrollment in gifted programs are mandated by state law. The State's apparent points are that the District has little if anything to do with eligibility for participation in the gifted program and that the State's regulatory scheme for gifted programs could not possibly be the result of the District's *de jure* discrimination. Finally, the State returns to a recurring theme in this decades old case—the expense of litigation. It notes that the task of determining whether current imbalances are the result of past *de jure* discrimination "will require an expensive, time-consuming gathering of 40 years' worth of data, combined with the analysis and opinions of paid experts." The State of Georgia then leaves it for the Court to figure out:

> If the Court concludes, as argued by the United States, that a presumption that the current imbalance is traceable to prior *de jure* segregation is sufficient for the Court to approve the consent order submitted by the parties, then the State of Georgia will abide by that consent order.

(Doc. 45 at 5).

The District's response is carefully worded. The District takes issue with some conclusions in the proposed injunction, (Doc. 46 at 4), but concludes that the District "agreed to the terms of the consent order . . . rather than face the potential cost and time involved in litigating this issue with the Department of Justice, existing intervenors, or others that might choose to seek to intervene if a highly publicized and contested legal proceeding were to result." (Doc. 46 at 3). Then, like the State of Georgia, the District punts to the Court:

> The Department of Justice has cited authority indicating that the Court has jurisdiction and authority to enter the consent order as filed, given the law and history of this case, without factual determinations based on a testimonial and evidentiary record. The District stands ready to abide by the terms of the consent order to which it has agreed in an effort to achieve dismissal within three years of all terms of the injunction without the necessity for such litigation.

(Doc. 46 at 5).

The United States' lengthy response provides some additional factual information but at bottom simply reiterates its contention that the proposed injunction is constitutional because there exists a presumption that any racial imbalance in the District today is the result of the *de jure* discrimination that existed prior to 1974.[2]

The proposed injunction presents significant issues. The Court appreciates the parties' efforts to assist in the resolution of those issues. The Court will take the proposed injunction under consideration. In the meantime, the Court **STAYS** the 1974 desegregation order as it applies to the Peach County School District.

SO ORDERED, this 30th day of December, 2015.

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[2] Surprisingly, the United States continues to tilt at the Court's observation that Judge Owens never denied the United States' 1988 request that the Court dismiss this case because the District had achieved unitary status. (For a fuller discussion of this issue, see the Court's March 13 order, Doc. 15). This tilting illustrates the United States' inability to focus. Regardless of whether Judge Owens denied the motion, the relevant real world fact is that the United States, as far as the record before this Court reveals, completely ignored Judge Owens' directives, as summarized in the concluding paragraph of his January 12, 1989 order:

> In conclusion, this court determines that plaintiff United States can make and has made a proper motion to bring before the court the issue of the unitary status of the nine defendant school districts. The facts leading to the resolution of that issue can best be ascertained through the thorough investigation and complete airing of views which are the hallmarks of the adversarial process. Thus, this court accepts the government's proposal in so far as that proposal offers to shoulder the identified costs of the defendant school districts. This court also accepts the government's offer to coordinate the investigation in the interests of efficiency and economy.

(Doc. 1-74 at 6).

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT